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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-306

12 **KEVIN JOSEPH MCDONALD**
13 **P.O. Box 4432**
14 **Bremerton, WA 98312**
Registered Nurse License No. RN 483056

A C C U S A T I O N

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 31, 1992, the Board of Registered Nursing issued Registered
24 Nurse License Number RN 483056 to Kevin Joseph McDonald (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on December 31, 2011, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Section 2762 of the Code states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or

1 administer to another, any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
3 defined in Section 4022.

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5 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
6 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
7 or the possession of, or falsification of a record pertaining to, the substances described in
8 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
9 thereof.

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11 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
12 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
13 section."

14 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

23 DRUGS

24 10. MORPHINE – Morphine is a Schedule II controlled substance pursuant to Health and
25 Safety Code § 11055(b)(1)(M), and a dangerous drug within the meaning of Business and
26 Professions Code § 4022(a). It is the narcotic substance *Morphine sulphate*.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 11. Respondent is subject to disciplinary action under sections 2761(a) and 2762(a) in
4 that he obtained or possessed Morphine Sulphate for us own use in violation of the law. The
5 circumstances are as follows:

6 12. On or about August 31, 2005 and September 1, 2005, Respondent, while working as a
7 registered nurse at St. Joseph Hospital in Eureka, California, diverted *Morphine sulphate* for his
8 own use by removing from the hospital narcotics storage unit a total of 18 syringes for Patient A,
9 totalling 118 mg of *Morphine sulphate*, and failing to account for its administration or wastage in
10 hospital or patient records.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct)

13 13. Respondent is subject to disciplinary action under sections 2761(a) and 2762(e) in
14 that he falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in
15 hospital or patient records for Patient A, pertaining to *Morphine sulphate*, as described above in
16 paragraph 12.

17 THIRD CAUSE FOR DISCIPLINE

18 (Conviction of Crime)

19 14. Respondent is subject to disciplinary action under sections 490, 2761(f) and 2762(c)
20 in that he was convicted of a crime that is substantially related to the practice of nursing and one
21 which also involves the consumption, or self-administration of alcohol or drugs. The
22 circumstances are as follows:

23 15. On or about December 6, 2006, Respondent was convicted by his plea of guilty to a
24 violation of Penal Code § 273a(a), for the infliction of unjustifiable physical pain/mental
25 suffering, or, having the care or custody of two minor children, did injure, cause or permit the
26 persons or health of said children to be injured or did willfully cause or permit said children to be
27 placed in such situation that their person or health was endangered, a misdemeanor. At the time of
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1 sentencing, it was specifically noted by the court that the allegation, offense occurred while the
2 defendant was under the influence of either alcohol or drugs.

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4 PRAYER

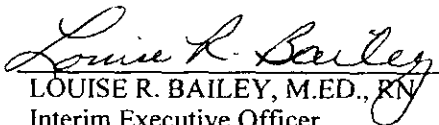
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Registered Nursing issue a decision:

7 1. Revoking or suspending Registered Nurse License Number RN 483056, issued to
8 Kevin Joseph McDonald.

9 2. Ordering Kevin Joseph McDonald to pay the Board of Registered Nursing the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.
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15 DATED: 12/24/09


16 LOUISE R. BAILEY, M.ED., RN
17 Interim Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

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23 accusation.rtf
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